

ORIGINAL

Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

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**DEC 21 2000**

In the Matter of )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Petition of the State Independent Alliance and )  
the Independent Telecommunications Group )  
for a Declaratory Ruling That the Basic )  
Universal Service Offering Provided by )  
Western Wireless in Kansas is Subject to )  
Regulation as Local Exchange Service )

WT Docket No. 00-239

**DOCKET FILE COPY ORIGINAL**

To: Wireless Telecommunications Bureau

**COMMENTS OF DOBSON CELLULAR SYSTEMS, INC.**

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## SUMMARY

The Commission should deny Petitioners' request that Western Wireless's Basic Universal Service ("BUS") offering be deemed as a local exchange service for purpose of the Communications Act (the "Act"). The language of the Act does not support Petitioners' request. The Act broadly defines the "mobile services" subject to Section 332(c)(3) preemption, and the BUS offering is consistent with this statutory definition. Customers can move their CPE anywhere within their carrier's service area, like any other mobile station, and Petitioners' standard for determining mobility is unduly narrow and unworkable. Moreover, Section 251 of the Act gives the Commission only limited authority to regulate CMRS as a local exchange service. Petitioners have not presented any public interest basis for the Commission to impose such regulation on CMRS services.

Western's status as an Eligible Telecommunications Carrier for its BUS offering is irrelevant to a determination as to whether the service is CMRS. The Act expressly allows CMRS carriers to be deemed ETCs without being regulated as LECs. Commission precedent affirms Congress' intent in this regard.

Finally, grant of Petitioners' request would undermine the Commission's policy objectives in allowing flexible use of the CMRS spectrum. Wireless services such as BUS are still in their nascency. Regulating a CMRS such as BUS as local exchange service would have a chilling effect on the development and deployment of innovative and competitive new services. Similarities between BUS offering and traditional local exchange service should have no bearing on this proceeding, as such similarities also exist between most CMRS services and local exchange services.

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To:     Wireless Telecommunications Bureau

**COMMENTS OF DOBSON CELLULAR SYSTEMS, INC.**

Dobson Cellular Systems, Inc. ("Dobson"),<sup>1</sup> on behalf of its subsidiaries and affiliates, hereby submits comments in opposition to the above-referenced petition.<sup>2</sup> The Commission should deny Petitioners' request that Western Wireless's ("Western") Basic Universal Service ("BUS"), as offered in Kansas, be deemed subject to regulation as local exchange service rather than as Commercial Mobile Radio Service ("CMRS"). For the reasons discussed below, regulation of BUS as CMRS is consistent with the Communications Act's (the "Act") provisions regarding universal service, local competition, and mobile services. The declaratory ruling

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<sup>1</sup> Dobson is a leading provider of rural and suburban cellular services throughout the country.

<sup>2</sup> *Petition of the State Independent Alliance and the Independent Telecommunications Group for a Declaratory Ruling that the Basic Universal Service Offering Provided by Western Wireless in Kansas is Subject to Regulations as Local Exchange Service*, WT Docket No. 00-239, Public Notice, DA No. 00-2622 (released November 21, 2000).

sought in the Petition is contrary to statute and the Commission's rules, and would undermine the Commission's policy objectives of promoting new and innovative services.

## **DISCUSSION**

### **I. THE COMMUNICATIONS ACT DOES NOT SUPPORT PETITIONERS' REQUEST**

#### **A. The Communications Act Broadly Defines Mobile Services Subject to Section 332(c)(3) Preemption**

Relying primarily on the definition of "mobile station," in Section 3 of the Act as the statutory basis for their request, Petitioners assert that the purportedly "fixed" nature of BUS renders it subject to regulation as a LEC. In fact, the "mobile services" not subject to state or local entry regulation under Section 332(c)(3) are significantly broader than Petitioners acknowledge.<sup>3</sup> Petitioners have failed to provide a sound statutory basis for the extraordinary action they request.

Under the Act, a "commercial mobile service" is "any mobile service . . . that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, . . . ."<sup>4</sup> A "mobile service", in turn, is defined as:

[A] radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (A) both one-way and two-way radio communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an

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<sup>3</sup> Section 332(c)(3) of the Communications Act provides, in relevant part, that "no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services."

<sup>4</sup> 47 U.S.C. § 332(d)(1).

individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any service for which a license is required in a personal communications service established pursuant to the proceeding[s] [Docket No. 90-314, 92-100], or any successor proceeding.<sup>5</sup>

Congress has thus defined “mobile services” broadly. As the Commission explained, a mobile service “allows the end user to communicate while moving *or from different locations*” while “[f]ixed service *requires* the end user to be *at a set location*.”<sup>6</sup>

Petitioners assert that BUS “is a fixed wireless local loop service that is offered as a substitute for wireline local exchange service.”<sup>7</sup> As explained in the *CMRS Flex First Report and Order*, however, the Commission explained that a wireless local loop service may be either a “mobile” or “fixed” service:

In the PCS context . . . we have consistently stated that we envisioned PCS providers offering a broad array of services, including services that could potentially extend, replace, and compete with wireline local exchange service. These services, including “wireless local loop,” may be delivered *using a system architecture that is mobile or fixed*, or that combines mobile and fixed components.<sup>8</sup>

Thus, a service that directly competes with or replaces wireline local exchange services is not, *per se*, a “fixed” service. Petitioners rely on an unduly narrow interpretation of the statutory term “mobile stations” that would render virtually every wireless service directly competing with a

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<sup>5</sup> *Id.* § 153(27) (emphasis added).

<sup>6</sup> *Amendment of the Commission’s Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd. 8965, ¶ 6 n.13 (1996) (“*CMRS Flex First Report and Order*”).

<sup>7</sup> Petition at 6.

<sup>8</sup> *CMRS Flex First Report and Order* at 8965 ¶ 7 (emphasis added) (citing *Amendment of the Commission’s Rules to Establish New Personal Communications Services, Notice of Proposed Rulemaking and Tentative Decision*, 7 FCC Rcd. 5676, 5681 ¶ 10 (1992)).

LEC as “fixed” and significantly restrict the preemptive scope of Section 332(c)(3). As discussed below, Petitioners’ arguments contravene the statute and Commission precedent, and should be rejected.<sup>9</sup>

**B. BUS Satisfies the Statutory Definition of Commercial Mobile Service**

As Petitioners note, a “mobile station” is a “a radio communication station capable of being moved and which ordinarily does move.”<sup>10</sup> The Commission should reject, however, the implication that this definition is clearly dispositive of Petitioners’ request.<sup>11</sup> Under Petitioners’ approach, the nature of the customer’s CPE would dictate a carrier’s regulatory treatment.<sup>12</sup> Petitioners’ arguments that the size, weight and appearance of the FWT render it not a “mobile station” are, however, necessarily subject to improvements in technology. As the Commission is aware, during the early years of cellular service, cellular handsets and portable units were substantially larger and, unless installed in a motor vehicle, arguably less “mobile” than they are

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<sup>9</sup> Congress expressly envisioned that PCS services would be subject to regulation as CMRS, and rebutting this statutory presumption would require far more than Petitioners have provided; to subject Western’s cellular service to a lesser standard would contravene Congress’ and the Commission’s policy of promoting regulatory parity of substantially similar services.

<sup>10</sup> Petition at 5 (*quoting* 47 U.S.C. § 153(27)-(28)).

<sup>11</sup> At least one court has determined that this definition, and that of “land station,” “are best described as much ado about nothing.” *Sprint Spectrum, L.P. v. Craig Willoth*, 176 F.3d 630, 641 n.2 (2d Cir. 1999).

<sup>12</sup> “Customer premises equipment” is defined simply as “equipment employed *on the premises of a person* (other than a carrier) to originate, route, or terminate telecommunications.” The BUS Fixed Wireless Terminal (“FWT”) is clearly CPE, as defined in the Act. *See* 47 U.S.C. § 153(14); *see also Promotion of Competitive Networks in Local Telecommunications Markets*, WT Docket No. 99-217, FCC 00-366, ¶ 111 (rel. Oct. 25, 2000) (customer-end antennas more akin to CPE than telecommunications equipment). The fact that Western holds title to the FWT is irrelevant under the statutory definition, and Petitioners’ argument that the FWT is somehow akin to network equipment (Petition at 8 n.19) should be rejected.

now.<sup>13</sup> Similarly, laptop computers used by unlicensed PCS users are not any less “mobile” simply by being more cumbersome to wield than a more upscale wireless handset. Petitioners would have the Commission essentially render a value judgment -- *i.e.*, how often does the CPE move or how difficult is it to move -- based on a “snapshot” view of the current state of BUS technology. The Commission has rightfully expressed wariness in this proceeding that it not prejudge the technologies to be used for telecommunications services, and this skepticism is particularly warranted here.<sup>14</sup>

The Commission must instead consider other relevant factors, such as the architecture of the CMRS provider’s network, and the customer’s ability to move the CPE between locations without prior Commission approval and carrier coordination. When viewed in this context, the FWT and accompanying handset equipment cannot be deemed a “land station” under the Act. On one hand, cellular base stations in Western’s and other carriers’ networks are structures of substantial size and must, as an engineering matter, be anchored to the ground and clearly are “land stations.”<sup>15</sup> Movement of these facilities typically requires local zoning approvals and carriers do not intend that they be moved. The FWT, in contrast, can easily be moved between customer premises by the customer, and such location changes are accomplished without prior

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<sup>13</sup> Petitioners’ comparison between the FWT and Western’s current radio station units must be rejected out of hand. *See* Petition at 10 n.27.

<sup>14</sup> *See Amendment of the Commission’s Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, Second Report and Order and Order on Reconsideration*, 15 FCC Rcd. 14680, ¶ 7 (2000) (“*CMRS Flex Second Report and Order*”)(“At this point . . . the development of fixed and fixed/mobile services on CMRS spectrum is at too early a stage for us to anticipate how the future evolution of fixed and mobile services will occur, how they might be integrated, or the variety of services that will develop.”).

<sup>15</sup> *See* 47 C.F.R. § 24.5 (defining “land station” as “[a] station in the mobile service not intended to be used while in motion”).



Commission or zoning approval or frequency coordination. Under the Commission's rules, the fact that a service is typically operated when the CPE is stationery does not render it "fixed."<sup>16</sup> As the Commission stated in 1999, Western's FWT "is basically a cellular phone with a phone jack."<sup>17</sup>

Indeed, the Commission recently rejected arguments that, for purposes of facilitating the deployment of wireless local loop services, allowing "nomadic" operations in the 3650-3700 MHz band should be allowed in spectrum allocated for fixed services.<sup>18</sup> The Commission determined that such "nomadic" or "temporary fixed" operations which, as described in comments "differ from traditional mobile operations in that transmissions do not generally occur when the radio is in rapid, high-speed motion," fall under the definition of "mobile service" in the applicable Commission rules.<sup>19</sup> This reflects the Commission's narrow view of what constitutes a "fixed service" for purposes of its CMRS rules.<sup>20</sup>

BUS does not involve service between two "specified points," but between a specified point and a point of the customer's choosing, anywhere within the carrier's geographic service

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<sup>16</sup> See *id.* (defining "mobile station" as "[a] station in the mobile service intended to be used while in motion or *during halts at unspecified points*" (emphasis added)).

<sup>17</sup> *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Fourth Report*, 14 FCC Rcd. 10145, App. F at F-3 (original released June 24, 1999).

<sup>18</sup> See *Amendment of the Commission's Rules with Regard to the 3650-3700 MHz Government Transfer Band, First Report and Order and Second Notice of Proposed Rulemaking*, ET Docket No. 98-237, WT Docket No. 00-32, FCC 00-363, ¶ 18 (rel. Oct. 24, 2000).

<sup>19</sup> *Id.* (discussing Motorola Comments in ET Docket No. 98-237, filed Feb. 16, 1999).

<sup>20</sup> See *id.* (noting that the rules define "fixed service as a radiocommunication service between fixed points.") In fact, the Part 24 PCS rules further clarify that fixed service is "radiocommunication service between *specified* fixed points." 47 C.F.R. § 24.5.

area. Unlike a genuinely “fixed” wireless CLEC, like Winstar, XO Communications or Teligent, with operations at LMDS, DEMS or 39 GHz spectrum, a BUS subscriber can move its CPE to anywhere its carrier’s CMRS service is available without requesting such change from the carrier. As explained in the KCC testimony included with the Petition, the FWT is “actually very similar to the early bag phones that were three watt phones that came out initially. Same degree of roaming, same degree of mobility.”<sup>21</sup> BUS service requires no changes to the cellular carrier’s underlying architecture -- only a change in the location of a customer’s CPE.

Finally, Petitioners’ argument that BETRS is analogous to BUS is unavailing. While BETRS and Western’s BUS service both involve the provision of basic telecommunications services to customers via wireless technology, they are dramatically different. BETRS is a highly specialized service which allows a state-authorized local exchange provider to serve a customer to whom providing service via wireline technology is impractical.<sup>22</sup> Western’s BUS offering, in turn, is a flexible use of its preexisting mobile network. BETRS operates via a rural subscriber station authorized to communicate with and through the LEC’s central office station. Central office stations are only able to communicate with rural subscriber stations at specific locations;<sup>23</sup> as such BETRS is a fixed point-to-point service. In contrast, Western’s BUS uses a carrier’s existing mobile service network. The CPE is not restricted to using one specific base station, nor are its base stations restricted to only communications with BUS terminals.

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<sup>21</sup> Hearing Transcript at 63.

<sup>22</sup> 47 C.F.R. § 22.702.

<sup>23</sup> *Id.* § 22.705.

**C. The Commission Has Only Limited Authority to Regulate CMRS as Local Exchange Service**

Section 3(26) of the Communications Act defines “local exchange carrier” as “any person that is engaged in the provision of telephone exchange service or exchange access.”<sup>24</sup> Importantly, however, Congress in the 1996 Act provided further that “[s]uch term *does not* include a person insofar as such person is engaged in the provision of a commercial mobile service under Section 332(c), *except to the extent that the Commission finds that such service should be included in the definition of such term.*”<sup>25</sup> As the Commission noted, “Congress recognized that some CMRS providers offer telephone exchange and exchange access services, and concluded that their provision of such services, by itself, did not require CMRS providers to be classified as LECs.”<sup>26</sup>

Thus, the Commission has discretion whether to regulate CMRS providers as LECs, and it must exercise that discretion consistent with the Act. It is not enough that a CMRS licensee’s service resembles local exchange service; otherwise, the statutory definition of “local exchange service” would be the sole governing factor as to whether a CMRS service is subject to local exchange service regulation.<sup>27</sup> Rather, the Commission must find an alternative statutory basis for determining that CMRS should be regulated as local exchange service. Petitioners have

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<sup>24</sup> 47 U.S.C. § 153(26).

<sup>25</sup> *Id.* (emphasis added).

<sup>26</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, ¶ 1004 (1996).

<sup>27</sup> Indeed, the Commission in 1996 declined to regulate CMRS as LECs solely on the basis of arguments that “a CMRS provider should [] be treated as a LEC if it provides fixed local service” or “when it establishes a wireless local loop for the express purpose of competing against or bypassing the landline loop.” *See id.*

found no public interest basis for doing so. CMRS providers do not control essential facilities and, because of the competitiveness of the industry, the Commission has often determined that the regulations imposed on LECs and other common carriers need not apply to CMRS.<sup>28</sup> This remains the case for Western's BUS, and Petitioners fail to demonstrate how Western's service harms consumers; if a Western BUS customer is dissatisfied with its service, it can simply obtain service from the ILEC or another CMRS carrier. Furthermore, Petitioners' argument that CMRS licensees and LECs are somehow subject to disparate regulation, while outwardly appealing, oversimplifies the Communications Act's regulatory regime. BUS and similar CMRS offerings remain subject to a panoply of Title II and Title III regulation, and technical and service rules under Parts 20, 22, 24, 64 and 101 of the Act -- much of which do *not* apply to LECs. Petitioners' implication that CMRS providers are somehow comparatively unregulated vis-a-vis all LECs is simply wrong and should be rejected.

Moreover, other statutory provisions *restrict* the Commission's discretion to subject CMRS carriers to local exchange carrier regulation, and the Commission should be wary of efforts to circumvent Congress' intent by narrowly defining "mobile services." Section 332(c)(3) itself provides that:

[A] State may petition the Commission for authority to regulate the rates for any commercial mobile service and the Commission shall grant such petition if such State demonstrates that -- (i) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or (ii) such market conditions exist and such service is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State.

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<sup>28</sup> See 47 C.F.R. §§ 20.15(b)-(c) (tariffing, Section 214 authority), 64.2400(b) (truth-in-billing requirements); *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Fourth Report and Order*, CC Docket No. 94-54, FCC 00-253, ¶ 12 (released July 24, 2000); *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd 1411, ¶ 237 (1994).

Petitioners ask, in essence, that the Kansas Corporation Commission be given authority to regulate the rates for BUS service which, presumably, would include the “exchange access” and “telephone exchange service” provided via BUS -- regardless of whether the market conditions described in Section 332(c)(3) exist. The State of Kansas, however, has not requested such authority, and the Petitioners simply do not have standing to seek it on the State’s behalf.

Section 332(c)(8), which exempts CMRS providers from equal access requirements, authorizes the Commission to require equal access only if it “determines that subscribers to such services are denied access to the provider of telephone toll services of the subscribers’ choice, *and that such denial is contrary to the public interest, convenience, and necessity . . .*.”<sup>29</sup> This statutory provision further reflects Congress’ recognition that because CMRS carriers do not control essential facilities, it is unnecessary to impose LEC-style regulation upon them. Petitioners would impose LEC regulation on CMRS providers simply for regulation’s sake.

## **II. A WIRELESS CARRIER’S ELIGIBLE TELECOMMUNICATIONS CARRIER STATUS FOR PURPOSES OF SECTION 214(e)(1) IS IRRELEVANT TO ITS STATUS AS A CMRS CARRIER**

Petitioners make much ado about the Kansas Corporation Commission’s designation of Western as an eligible telecommunications carrier (“ETC”). Petitioners fail to acknowledge, however, that nothing in the Communications Act or the Commission’s rules requires that an ETC be regulated as a LEC. This is explicit in the language of Section 214(e)(1) itself, which provides simply that a “common carrier designated as an eligible telecommunications carrier” pursuant to Section 214(e) and the Commission’s rules is eligible for universal service support.<sup>30</sup>

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<sup>29</sup> 47 U.S.C. § 332(c)(8) (emphasis added).

<sup>30</sup> *Id.* § 214(e)(1).

CMRS licensees are both common carriers and telecommunications carriers, as those terms are defined in the Act.<sup>31</sup> The Commission can only presume that Congress meant what it said when it determined that “telecommunications carriers” generally -- not just local exchange carriers -- could be eligible for universal service support.<sup>32</sup>

In addition, the Commission has already determined that, for purposes of ETC designations, the fact that a wireless carrier is not subject to the same regulatory requirements as a LEC is immaterial to the former’s ETC eligibility.<sup>33</sup> The Commission expressly determined, for example, that technological limits on CMRS providers’ current ability to provide enhanced 911 services, and their exemption from equal access obligations under Section 332(c)(8), should not render them ineligible for universal service support.<sup>34</sup> Thus, the mere fact that a CMRS provider with ETC status would not be subject to the same state regulations as a LEC is unpersuasive; Congress and the Commission expressly determined that CMRS providers and LECs would both be eligible for universal service support while subject to different regulatory obligations.

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<sup>31</sup> *Id.* §§ 153(10), 153(44), 332(d).

<sup>32</sup> *See Brown v. Gardner*, 513 U.S. 115, 120 (1994) (where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion), *citing Russello v. United States*, 464 U.S. 16, 23 (1983).

<sup>33</sup> *Federal-State Joint Board On Universal Service, Report and Order*, 12 FCC Rcd. 8776, ¶ 147 (1997).

<sup>34</sup> *Id.* 8815-16 ¶ 78, n.116 (enhanced 911) and 8819-20 ¶ 79 (equal access).

### III. GRANT OF PETITIONERS' REQUEST WOULD UNDERMINE THE COMMISSION'S POLICY OBJECTIVES IN ALLOWING FLEXIBLE USE OF CMRS SPECTRUM

As discussed above, grant of Petitioners' request necessarily would require the Commission to embrace a narrow reading of what constitutes "mobile service." In the *CMRS Flex First Report and Order*, the Commission sought to eliminate the uncertainty regarding the provision of fixed services over spectrum allocated for CMRS.<sup>35</sup> The Commission did not attempt "to limit potential use of CMRS spectrum to specific applications" or to "restrict fixed service to certain configurations."<sup>36</sup> The Commission further stated that:

In light of the dynamic, evolving nature of the wireless industry, we are concerned that regulatory restrictions on use of the spectrum could impede carriers from anticipating what services customers most need, and could result in inefficient spectrum use and reduced technological innovation. *Allowing service providers to offer all types of fixed, mobile and hybrid services in response to market demand will allow for more flexible responses to consumer demand, a greater diversity of services and combinations of services, and increased competition.* This is consistent with the goals of the 1996 Act, which seeks to increase competition between the various providers of telecommunications services, *including competitive alternatives to traditional local exchange service.* All consumers will also benefit from technological advances in fixed services and *fixed/mobile combinations that potentially could be stifled by restrictive service definitions.*<sup>37</sup>

The Commission in the *CMRS Flex Second Report and Order* did not modify this policy in any way, noting that "[t]he record also underscores the potential for the development of wireless services on CMRS spectrum *that combine fixed and mobile functionalities.*"<sup>38</sup>

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<sup>35</sup> *CMRS Flex First Report and Order*, 11 FCC Rcd. at 8973 ¶ 17.

<sup>36</sup> *Id.* at 8974 ¶¶ 18-19.

<sup>37</sup> *Id.* at 8975 ¶ 22 (emphasis added).

<sup>38</sup> *CMRS Flex Second Report and Order*, 15 FCC Rcd. at 14683 ¶ 7 (emphasis added).

Petitioners seize on the Commission's determination that "[t]o the extent that a party requires a determination of whether or not a particular service *that includes a fixed wireless component* should be treated as CMRS, that party should petition the Commission for a declaratory ruling."<sup>39</sup> Petitioners presuppose, however, that Western's BUS genuinely "includes a fixed wireless component;" as discussed *supra*, BUS is not properly characterized as a "fixed" service. Grant of the Petitioners' request would therefore reintroduce uncertainty into carriers' regulatory obligations by indicating that the more directly a CMRS provider -- via the provision of a genuinely mobile service -- competes for customers with a local exchange carrier.<sup>40</sup> This will invariably render CMRS providers more reluctant to introduce new and innovative services.

Moreover, the fact that wireless carriers increasingly are able to offer services traditionally provided by wireline carriers, such as caller ID, "dial tone" service, voice mail, call waiting and, in the future, high-speed data connections does not make their services "fixed."<sup>41</sup> Indeed, the Commission has sought to encourage the development and innovation of such services in the wireless marketplace and, to Dobson's knowledge, the Commission has never contended that a

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<sup>39</sup> *Id.* at 14683 ¶ 8.

<sup>40</sup> Petitioners' reasoning opens a pandora's box of troubling scenarios. For example, the Commission has determined that increasing minutes of use by wireless subscribers may "indicate that mobile telephony is moving away from just complementing existing wireline voice service and towards competing directly with it." *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Fifth Report*, FCC 00-289, at 23 (rel. Aug. 18, 2000). Under Petitioners' reasoning, it appears that direct competition between a genuinely mobile service and an ILEC would open the door to ILEC-style regulation of the former; direct competition between an ILEC and a CMRS licensee has the same effect on the former, regardless of whether the latter's service is "fixed" or "mobile." See Petition at 18 ("a wireless carrier's fixed universal service offering that is a substitute for wireline local exchange service should be subject to the same regulatory treatment that is available to any other competitor providing the same service using non-wireless technology").

<sup>41</sup> See Petition at 6, 11.



CMRS provider's provision of these services may render it a LEC.<sup>42</sup> Finally, the Commission should reject Petitioners' assertion that Western's BUS pricing structure is an indicia of a fixed wireless service.<sup>43</sup> A review of Petitioners' description of the BUS pricing simply reflects the type of innovative introductory pricing plans, not uncommon in the wireless industry, used as a means of attracting customers.

CMRS providers' efforts to deploy services that directly compete with local exchange carriers are in their nascency. Whether marketed as "wireless local loop services," or provided via "mobile" or "fixed" services, the Commission should not take measures that discourage CMRS providers from deploying such new and innovative services.<sup>44</sup> Grant of Petitioners' request would have that very effect by subjecting CMRS providers' *mobile* services to LEC regulation.

## CONCLUSION

For the foregoing reasons, the Commission should deny Petitioners' request. There is no "confusion" for purposes of "determining whether Western Wireless should be designated as an

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<sup>42</sup> See *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Sixth Report and Order and Order on Reconsideration*, WT Docket No. 97-82, FCC 00-313, (rel. August 29, 2000); *Rules and Policies Regarding Calling Number ID Service, Memorandum Opinion and Order and Third Notice of Proposed Rulemaking*, 10 FCC Rcd. 11700, ¶ 101 (1995).

<sup>43</sup> See Petition at 12. Petitioners also reference a "tariff-like 'service agreement'" governing BUS. As the Commission is aware, CMRS providers' services are detariffed, and their service agreements -- regardless of how they appear -- do not have the same legal effect as tariffs. See *id.* at 7 n.16.

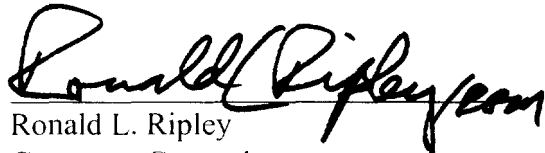
<sup>44</sup> See *In the Matter of Access Charge Reform*, 12 FCC Rcd. 15982, 16133 ¶ 344 (1997) (affirming enhanced service providers' exemption from access services in terms of the goals of the 1996 Act, saying that its purpose was to "preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services").

ETC” by virtue of its BUS service.<sup>45</sup> Petitioners’ request is without support in the Communications Act, as well as the Commission’s rules and precedent.

Respectfully submitted,

**DOBSON CELLULAR SYSTEMS, INC.**

By:

A handwritten signature in black ink, appearing to read "Ronald L. Ripley", is written over a horizontal line.

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<sup>45</sup> See Petition at 19.